

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>:</b>	<b>CIVIL ACTION</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>NO. 06-537-2</b>
	<b>:</b>	
<b>CHARLES HOGAN</b>	<b>:</b>	
<b>a/k/a "Snap"</b>	<b>:</b>	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**April 10th , 2007**

Defendant Charles Hogan has submitted a Motion to Dismiss the Indictment for Violation of the Speedy Trial Act. An oral argument was conducted before this Court on April 5, 2007. For the reasons that follow, the Motion will be granted and the Indictment will be dismissed without prejudice.

**I. BACKGROUND**

On September 27, 2006, Defendant and his co-defendant, Paul King, were charged by a sealed Indictment with conspiracy to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846 (Count One), and possession with the intent to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846(a)(1), (b)(1)(A) (Count Two). Warrants for their arrest were issued that same day.

On October 4, 2006, Defendant was arrested in Philadelphia. On October 10, 2006, Defendant was arraigned on both counts of the Indictment and was ordered detained pending trial. On February 8, 2007, the Government unsealed the Indictment by filing a notice with the Clerk of the Court. On February 22, 2007, Defendant filed a Motion to Dismiss the Indictment for Violation of the Speedy Trial Act.

## **II. ANALYSIS**

### **A. Speedy Trial Violation**

Defendant argues that, in the absence of excludable time, the Speedy Trial Act requires the Government to bring a criminal defendant to trial within 70 days of the return of the Indictment or the initial entry of a not guilty plea, whichever date last occurs. 18 U.S.C. § 3161(c)(1). Because an Indictment was returned in this case on September 27, 2006 and Defendant entered his initial plea of not guilty on October 10, 2006, Defendant argues that his Speedy Trial deadline was December 20, 2006.

The Government takes issue with only one aspect of Defendant's analysis. The Government argues that the Speedy Trial clock does not start until the Indictment is both filed and made public. 18 U.S.C. § 3161(c)(1) ("the trial of a defendant . . . shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."). In this case, the Indictment was not unsealed until February 8, 2007. Thus, according to the Government, the Speedy Trial clock ran only from February 8, 2007 until February 22, 2007, when Defendant filed his Speedy Trial Motion.

The Government's position, however, is without merit. Despite the fact that the Indictment remained sealed, the charges against Defendant were made public on October 10, 2006, when he was arraigned on the charges in the Indictment at a public hearing before Magistrate Judge Thomas Reuter. As the Government acknowledged during oral argument, the

public reading of the charges on that date effectively made the Indictment public.<sup>1</sup> Accordingly, the Government violated Defendant's right to a speedy trial by failing to bring him to trial by December 20, 2006.

### **B. Dismissal With or Without Prejudice**

Because a Speedy Trial violation has occurred, the Indictment must be dismissed, either with or without prejudice. 18 U.S.C. § 1362(a)(2); see also United States v. Taylor, 487 U.S. 326, 332-33 (1998). The Court must consider four specific factors, among others, in exercising its discretion. These factors are:

- 1) The seriousness of the offense;
- 2) The facts and circumstances which led to the dismissal;
- 3) The impact of reprosecution on the administration of the act and the administration of justice; and
- 4) The prejudice to the defendant.

18. U.S.C. § 3162(a)(2).

Having weighed these factors, the Court finds that dismissal without prejudice is the appropriate remedy in this case. First, Defendant's alleged offense is indisputably serious. He is alleged to have conspired to distribute a large amount of cocaine, approximately 90 kilograms. Moreover, Defendant has two prior convictions for possession with the intent to distribute controlled substances. Indeed, the crime charged is serious enough to merit the potential

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<sup>1</sup> Furthermore, the Government was not authorized to keep the Indictment under seal for as long as it did. Federal Rule of Criminal Procedure 6(e)(4) authorizes a United States Magistrate Judge to seal an indictment "until the defendant is in custody or has been released pending trial." In this case, the Magistrate Judge's Order identifies the risk of pre-arrest flight as the only factor weighing in favor of sealing the Indictment. See Pretrial Detention Order, docket no. 14. Indeed, the Government's Motion to Impound the Indictment only requested that the Indictment be impounded until the Clerk of the Court received "notice from the Assistant United States Attorney that the defendant(s) have been arrested."

punishment of mandatory life imprisonment.

Second, the Defendant does not allege, nor is there any evidence to suggest, that the circumstances leading to the Speedy Trial violation were a result of the Government's purposeful attempt to violate the Act.

Third, with respect to the impact of a reprosecution on the administration of justice and the Act, "the Act does not require dismissal with prejudice for every violation. Dismissal without prejudice is not a toothless sanction." Taylor, 487 U.S. at 332-33.

Finally, as Defendant's counsel acknowledged at oral argument, Defendant will not suffer prejudice if the Indictment is dismissed without prejudice.

### **III. CONCLUSION**

For the foregoing reasons, Defendant's Motion to Dismiss the Indictment for Violation of the Speedy Trial Act will be granted. The dismissal will be without prejudice. An appropriate Order follows.

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**ORDER**

**AND NOW**, this 10th day of April, 2007, upon consideration of **Defendant's** Motion to Dismiss the Indictment for Violation of the Speedy Trial Act (docket no. 23), the responses thereto, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED**. The Indictment is **DISMISSED WITHOUT PREJUDICE**. Accordingly, the Clerk of the Court shall mark this case **CLOSED**.

**BY THE COURT:**

\_\_S/ BRUCE W. KAUFFMAN\_\_  
**BRUCE W. KAUFFMAN, J.**